

HOUSE FILE 777

S-5046

1 Amend House File 777 as follows:

2 1. By striking everything after the enacting clause  
3 and inserting:

4 <Section 1. Section 21.6, subsection 3, paragraph  
5 d, Code 2009, is amended to read as follows:

6 d. Shall issue an order removing a member of a  
7 governmental body from office if that member has  
8 engaged in a prior violation of this chapter for which  
9 damages were assessed against the member during the  
10 member's term. In making this determination, the court  
11 shall recognize violations for which damages were  
12 assessed by the Iowa public information board created  
13 in section 23.3.

14 Sec. 2. Section 22.10, subsection 3, paragraph d,  
15 Code 2009, is amended to read as follows:

16 d. Shall issue an order removing a person from  
17 office if that person has engaged in a prior violation  
18 of this chapter for which damages were assessed against  
19 the person during the person's term. In making this  
20 determination, the court shall recognize violations  
21 for which damages were assessed by the Iowa public  
22 information board created in section 23.3.

23 Sec. 3. NEW SECTION. 23.1 Citation and purpose.

24 This chapter may be cited as the "*Iowa Public*  
25 *Information Board Act*". The purpose of this chapter  
26 is to provide an alternative means by which to secure  
27 compliance with and enforcement of the requirements of  
28 chapters 21 and 22 through the provision by the Iowa  
29 public information board to all interested parties of  
30 an efficient, informal, and cost-effective process for  
31 resolving disputes.

32 Sec. 4. NEW SECTION. 23.2 Definitions.

33 1. "*Board*" means the Iowa public information board  
34 created in section 23.3.

35 2. "*Complainant*" means a person who files a  
36 complaint with the board.

37 3. "*Complaint*" means a written and signed document  
38 filed with the board alleging a violation of chapter  
39 21 or 22.

40 4. "*Custodian*" means a government body, government  
41 official, or government employee designated as the  
42 lawful custodian of a government record pursuant to  
43 section 22.1.

44 5. "*Government body*" means the same as defined in  
45 section 22.1.

46 6. "*Person*" means an individual, partnership,  
47 association, corporation, legal representative,  
48 trustee, receiver, custodian, government body, or  
49 official, employee, agency, or political subdivision of  
50 this state.

1       7. *"Respondent"* means any agency or other unit  
2 of state or local government, custodian, government  
3 official, or government employee who is the subject of  
4 a complaint.

5       Sec. 5. NEW SECTION.   **23.3 Board appointed.**

6       1. An Iowa public information board is created  
7 consisting of five members appointed by the governor,  
8 subject to confirmation by the senate. Membership  
9 shall be balanced as to political affiliation as  
10 provided in section 69.16 and gender as provided in  
11 section 69.16A. Members appointed to the board shall  
12 serve staggered, four-year terms, beginning and ending  
13 as provided by section 69.19. A quorum shall consist  
14 of three members.

15       2. A vacancy on the board shall be filled by the  
16 governor by appointment for the unexpired part of the  
17 term. A board member may be removed from office by the  
18 governor for good cause. The board shall select one  
19 of its members to serve as chair and shall employ a  
20 director who shall serve as the executive officer of  
21 the board.

22       Sec. 6. NEW SECTION.   **23.4 Compensation and**  
23 **expenses.**

24       Board members shall be paid a per diem as specified  
25 in section 7E.6 and shall be reimbursed for actual and  
26 necessary expenses incurred while on official board  
27 business. Per diem and expenses shall be paid from  
28 funds appropriated to the board.

29       Sec. 7. NEW SECTION.   **23.5 Election of remedies.**

30       1. An aggrieved person, any taxpayer to or citizen  
31 of this state, the attorney general, or any county  
32 attorney may seek enforcement of the requirements of  
33 chapters 21 and 22 by electing either to file an action  
34 pursuant to section 17A.19, 21.6, or 22.10, whichever  
35 is applicable, or in the alternative, to file a timely  
36 complaint with the board.

37       2. If more than one person seeks enforcement of  
38 chapter 21 or 22 with respect to the same incident  
39 involving an alleged violation, and one or more of  
40 such persons elects to do so by filing an action under  
41 section 17A.19, 21.6, or 22.10 and one or more of such  
42 persons elects to do so by filing a timely complaint  
43 with the board, the court in which the action was filed  
44 shall dismiss the action without prejudice, authorizing  
45 the complainant to file a complaint with respect to  
46 the same incident with the board without regard to the  
47 timeliness of the filing of the complaint at the time  
48 the action in court is dismissed.

49       3. If a person files an action pursuant to section  
50 22.8 seeking to enjoin the inspection of a public

1 record, the respondent or person requesting access to  
2 the record which is the subject of the request for  
3 injunction may remove the proceeding to the board for  
4 its determination by filing, within thirty days of the  
5 commencement of the judicial proceeding, a complaint  
6 with the board alleging a violation of chapter 22 in  
7 regard to the same matter.

8     Sec. 8. NEW SECTION.   **23.6 Board powers and duties.**

9     The board shall have all of the following powers and  
10 duties:

11     1. Employ such employees as are necessary to  
12 execute its authority, including administrative law  
13 judges, and attorneys to prosecute respondents in  
14 proceedings before the board and to represent the board  
15 in proceedings before a court. Notwithstanding section  
16 8A.412, all of the board's employees, except for the  
17 executive director and attorneys, shall be employed  
18 subject to the merit system provisions of chapter 8A,  
19 subchapter IV.

20     2. Adopt rules with the force of law pursuant to  
21 chapter 17A calculated to implement, enforce, and  
22 interpret the requirements of chapters 21 and 22 and to  
23 implement any authority delegated to the board by this  
24 chapter.

25     3. Issue, consistent with the requirements of  
26 section 17A.9, declaratory orders with the force of law  
27 determining the applicability of chapter 21 or 22 to  
28 specified fact situations and issue informal advice to  
29 any person concerning the applicability of chapters 21  
30 and 22.

31     4. Receive complaints alleging violations of  
32 chapter 21 or 22, seek resolution of such complaints  
33 through informal assistance or through mediation and  
34 settlement, formally investigate such complaints,  
35 decide after such an investigation whether there is  
36 probable cause to believe a violation of chapter 21  
37 or 22 has occurred, and if probable cause has been  
38 found prosecute the respondent before the board in a  
39 contested case proceeding conducted according to the  
40 provisions of chapter 17A.

41     5. Request and receive from a government body  
42 assistance and information as necessary in the  
43 performance of its duties. The board may examine  
44 a record of a government body that is the subject  
45 matter of a complaint, including any record that is  
46 confidential by law. Confidential records provided  
47 to the board by a governmental body shall continue  
48 to maintain their confidential status. Any member or  
49 employee of the board is subject to the same policies  
50 and penalties regarding the confidentiality of the

1 document as an employee of the government body.

2 6. Issue subpoenas enforceable in court for the  
3 purpose of investigating complaints and to facilitate  
4 the prosecution and conduct of contested cases before  
5 the board.

6 7. After appropriate board proceedings, issue  
7 orders with the force of law, determining whether there  
8 has been a violation of chapter 21 or 22, requiring  
9 compliance with specified provisions of those chapters,  
10 imposing civil penalties equivalent to and to the same  
11 extent as those provided for in section 21.6 or 22.10,  
12 as applicable, on a respondent who has been found in  
13 violation of chapter 21 or 22, and imposing any other  
14 appropriate remedies calculated to declare, terminate,  
15 or remediate any violation of those chapters.

16 8. Represent itself in judicial proceedings  
17 to enforce or defend its orders and rules through  
18 attorneys on its own staff, through the office of the  
19 attorney general, or through other attorneys retained  
20 by the board, at its option.

21 9. Make training opportunities available to lawful  
22 custodians, government bodies, and other persons  
23 subject to the requirements of chapters 21 and 22 and  
24 require, in its discretion, appropriate persons who  
25 have responsibilities in relation to chapters 21 and 22  
26 to receive periodic training approved by the board.

27 10. Disseminate information calculated to inform  
28 members of the public about the public's right to  
29 access government information in this state including  
30 procedures to facilitate this access and including  
31 information relating to the obligations of government  
32 bodies under chapter 21 and lawful custodians under  
33 chapter 22 and other laws dealing with this subject.

34 11. Prepare and transmit to the governor and to the  
35 general assembly, at least annually, reports describing  
36 complaints received, board proceedings, investigations,  
37 hearings conducted, decisions rendered, and other work  
38 performed by the board.

39 12. Make recommendations to the governor and the  
40 general assembly by proposing legislation relating  
41 to issues involving public access to meetings of a  
42 governmental body and to records of a government body  
43 including but not limited to recommendations relating  
44 to the following issues:

45 a. The categorization of government records.

46 b. Public employment applications.

47 c. Information unduly invading personal privacy  
48 including personal information on mailing lists and  
49 opt-in provisions relating to such lists and personal  
50 information in confidential personnel records of a

1 government body.  
2 d. Tentative, preliminary, or draft material.  
3 e. Serial meetings of less than a majority of a  
4 governmental body.  
5 f. Definitions of what constitutes a governmental  
6 body for purposes of chapter 21 and what constitutes a  
7 government body for purposes of chapter 22.  
8 13. Aid the general assembly in evaluating the  
9 impact of legislation affecting public access to  
10 government information.  
11 14. Conduct public hearings, conferences,  
12 workshops, and other meetings as necessary to address  
13 problems and suggest solutions concerning access to  
14 government information and proceedings.  
15 15. Review the collection, maintenance, and use of  
16 government records by lawful custodians to ensure that  
17 confidential records and information are handled to  
18 adequately protect personal privacy interests.  
19 Sec. 9. NEW SECTION. 23.7 Filing of complaints  
20 with the board.  
21 1. The board shall adopt rules with the force  
22 of law and pursuant to chapter 17A providing for the  
23 timing, form, content, and means by which any aggrieved  
24 person, any taxpayer to or citizen of this state,  
25 the attorney general, or any county attorney may file  
26 a complaint with the board alleging a violation of  
27 chapter 21 or 22. The complaint must be filed within  
28 sixty days from the time the alleged violation occurred  
29 or the complainant could have become aware of the  
30 violation with reasonable diligence. All complaints  
31 filed with the board shall be public records.  
32 2. All board proceedings in response to the filing  
33 of a complaint shall be conducted as expeditiously as  
34 possible.  
35 3. The board shall not charge a complainant any  
36 fee in relation to the filing of a complaint, the  
37 processing of a complaint, or any board proceeding or  
38 judicial proceeding resulting from the filing of a  
39 complaint.  
40 Sec. 10. NEW SECTION. 23.8 Initial processing of  
41 complaint.  
42 Upon receipt of a complaint alleging a violation  
43 of chapter 21 or 22, the board shall do either of the  
44 following:  
45 1. Determine that, on its face, the complaint  
46 is within the board's jurisdiction, appears legally  
47 sufficient, and could have merit. In such a case the  
48 board shall accept the complaint, and shall notify the  
49 parties of that fact in writing.  
50 2. Determine that, on its face, the complaint is

1 outside its jurisdiction, is legally insufficient, is  
2 frivolous, is without merit, involves harmless error,  
3 or relates to a specific incident that has previously  
4 been finally disposed of on its merits by the board or  
5 a court. In such a case the board shall decline to  
6 accept the complaint. If the board refuses to accept a  
7 complaint, the board shall provide the complainant with  
8 a written order explaining its reasons for the action.

9     Sec. 11. NEW SECTION.   **23.9 Informal assistance —**  
10 **mediation and settlement.**

11     1. After accepting a complaint, the board shall  
12 promptly work with the parties through its employees  
13 to reach an informal, expeditious resolution of the  
14 complaint. If an informal resolution satisfactory to  
15 the parties cannot be reached, the board or the board's  
16 designee shall offer the parties an opportunity to  
17 resolve the dispute through mediation and settlement.

18     2. The mediation and settlement process shall  
19 enable the complainant to attempt to resolve the  
20 dispute with the aid of a neutral mediator employed and  
21 selected by the board, in its discretion, from either  
22 its own staff or an outside source.

23     3. Mediation shall be conducted as an informal,  
24 nonadversarial process and in a manner calculated  
25 to help the parties reach a mutually acceptable and  
26 voluntary settlement agreement. The mediator shall  
27 assist the parties in identifying issues and shall  
28 foster joint problem solving and the exploration of  
29 settlement alternatives.

30     Sec. 12. NEW SECTION.   **23.10 Enforcement.**

31     1. If any party declines mediation or settlement or  
32 if mediation or settlement fails to resolve the matter  
33 to the satisfaction of all parties, the board shall  
34 initiate a formal investigation concerning the facts  
35 and circumstances set forth in the complaint. The  
36 board shall, after an appropriate investigation, make  
37 a determination as to whether the complaint is within  
38 the board's jurisdiction and whether there is probable  
39 cause to believe that the facts and circumstances  
40 alleged in the complaint constitute a violation of  
41 chapter 21 or 22.

42     2. If the board finds the complaint is outside the  
43 board's jurisdiction or there is no probable cause to  
44 believe there has been a violation of chapter 21 or 22,  
45 the board shall issue a written order explaining the  
46 reasons for the board's conclusions and dismissing the  
47 complaint, and shall transmit a copy to the complainant  
48 and to the party against whom the complaint was filed.

49     3. a. If the board finds the complaint is within  
50 the board's jurisdiction and there is probable cause

1 to believe there has been a violation of chapter 21  
2 or 22, the board shall issue a written order to that  
3 effect and shall commence a contested case proceeding  
4 under chapter 17A against the respondent. An attorney  
5 selected by the director of the board shall prosecute  
6 the respondent in the contested case proceeding. At  
7 the termination of the contested case proceeding the  
8 board shall, by a majority vote of its members, render  
9 a final decision as to the merits of the complaint. If  
10 the board finds that the complaint has merit, the board  
11 may issue any appropriate order to ensure enforcement  
12 of chapter 21 or 22 including but not limited to  
13 an order requiring specified action or prohibiting  
14 specified action and any appropriate order to remedy  
15 any failure of the respondent to observe any provision  
16 of those chapters.

17 b. If the board determines, by a majority vote of  
18 its members, that the respondent has violated chapter  
19 21 or 22, the board may also do any or all of the  
20 following:

21 (1) Require the respondent to pay damages as  
22 provided for in section 21.6 or 22.10, whichever is  
23 applicable, to the extent that provision would make  
24 such damages payable if the complainant had sought to  
25 enforce a violation in court instead of through the  
26 board.

27 (2) Void any action taken in violation of chapter  
28 21 if a court would be authorized to do so in similar  
29 circumstances pursuant to section 21.6.

30 c. The board shall not have the authority to remove  
31 a person from public office for a violation of chapter  
32 21 or 22. The board may file an action under chapter  
33 21 or 22 to remove a person from office for violations  
34 that would subject a person to removal under those  
35 chapters.

36 d. A final board order resulting from such  
37 proceedings may be enforced by the board in court  
38 and is subject to judicial review pursuant to section  
39 17A.19.

40 Sec. 13. NEW SECTION. 23.11 Defenses in a  
41 contested case proceeding.

42 A respondent may defend against a proceeding before  
43 the board charging a violation of chapter 21 or 22  
44 on the ground that if such a violation occurred it  
45 was only harmless error or that clear and convincing  
46 evidence demonstrated that grounds existed to justify  
47 a court to issue an injunction against disclosure  
48 pursuant to section 22.8.

49 Sec. 14. NEW SECTION. 23.12 Jurisdiction.

50 The board shall not have jurisdiction over the

1 judicial or legislative branches of state government or  
2 any entity, officer, or employee of those branches, or  
3 over the governor or the office of the governor.

4 Sec. 15. IOWA PUBLIC INFORMATION BOARD —  
5 TRANSITION PROVISIONS.

6 1. The initial members of the Iowa public  
7 information board established pursuant to this Act  
8 shall be appointed by September 1, 2010.

9 2. Notwithstanding any provision of this Act to the  
10 contrary, the director of the board and employees of  
11 the board shall not be hired prior to July 1, 2011.

12 3. Prior to July 1, 2011, the board shall submit  
13 a report to the governor and the general assembly.  
14 The report shall include a job description for the  
15 executive director of the board, goals for board  
16 operations, and performance measures to measure  
17 achievement of the board's goals.

18 Sec. 16. IOWA PUBLIC INFORMATION BOARD —  
19 CONTINGENT FUNDING. Implementation of the Iowa public  
20 information board is contingent upon the receipt of  
21 funding sufficient to cover the initial expenses of the  
22 board.

23 Sec. 17. EFFECTIVE DATE. Except for the section  
24 of this Act establishing transition provisions for the  
25 Iowa public information board, this Act takes effect  
26 July 1, 2011.>

27 2. Title page, by striking lines 1 through 3  
28 and inserting: <An Act creating the Iowa public  
29 information board and providing an effective date.>

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COMMITTEE ON STATE GOVERNMENT  
STACI APPEL, CHAIRPERSON